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OFFICE OF PETITIONS

In re Application of	:
Reed, et al.	:
Application No. 09/724,685	: DECISION ON APPLICATION
Filed: November 28, 2000	: FOR PATENT TERM ADJUSTMENT
Atty. Dkt. No.: 014058-008561US	:

This is a decision on the "APPLICATION PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed January 24, 2005. This matter is being properly treated under 37 CFR 1.705(b) as a timely filed application for patent term adjustment.

The application for patent term adjustment under 37 CFR 1.705(b) is hereby **GRANTED TO THE EXTENT INDICATED HEREIN.**

The correct Patent Term Adjustment ("PTA") at the time of the allowance is 650 days. The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the Notice of Allowance reflects an adjustment of 650 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicants requests that the Determination of Patent Term Adjustment be corrected from 241 days, as indicated on the Determination of Patent Term Adjustment mailed January 5, 2006, to an adjustment of 656 days.

Applicants argue that the Office failed to accord an adjustment of 441 days under 37 CFR 1.702(a)(2) and 1.703(a)(2). A review of the record does reflect that the application is entitled to an additional adjustment of 441 days, as argued, for failure to respond within four months after the date that the response after non-final Office action was submitted on June 21, 2004.

However, the adjustment is further properly reduced an additional 32 days in accordance with 37 CFR 1.704(c)(8) in connection with the supplemental reply (terminal disclaimer) submitted July 23, 2004. The reduction began June 22, 2004, the day after the date that the initial reply was filed, and ended July 23, 2004, the date the supplemental reply (terminal disclaimer) was filed.

In view thereof, at the time of allowance, the application was entitled to an adjustment of 914 days. The adjustment was properly reduced 264 days, resulting in an overall adjustment at the time of allowance of 650 days¹.

Applicants have further indicated that the patent will issue more than three years from the date upon which it was filed.

Applicants are reminded that if an application is entitled to an adjustment under 35 USC 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 USC 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 USC 154(b)(1)(B) in determining whether periods of delay overlap under 35 USC 154(b)(2)(A).

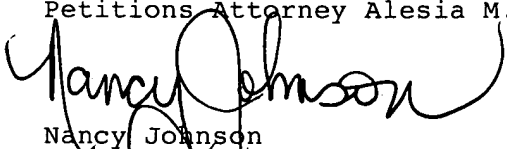
Thus, any days of delay for Office issuance of the patent more than three years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See, 35 USC 154(b)(1)(B), 35 USC 154(b)(2)(A), and 37 CFR § 1.703(f). See, also, *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Receipt is hereby acknowledged of the required Patent Term Adjustment application fee of \$200.00.

This application is being forwarded to the Office of Patent Publications for processing into a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculation

¹ Applicant is advised that the date indicated in any certificate of mailing is not taken into consideration for PTA calculation purposes. See 37 CFR 1.703(f).